And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

(Sept. 8, 1916, ch. 463, title VIII, §804, 39 Stat. 799.)

#### § 76. Retaliation against restriction of importations in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than \$2,000 nor more than \$50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

(Sept. 8, 1916, ch. 463, title VIII, §805, 39 Stat. 799.)

## § 77. Discrimination against neutral Americans in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than \$2,000 nor more than \$50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this subchapter shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this subchapter.

(Sept. 8, 1916, ch. 463, title VIII, §806, 39 Stat. 799.)

#### DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of authority vested in President by this section, see section 1(j), (k) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

#### Sec. CHAPTER 2A—SECURITIES AND TRUST (c) Standard of reasonableness. **INDENTURES** (d) Effective date of registration state-SUBCHAPTER I—DOMESTIC SECURITIES ment with regard to underwriters. Measure of damages; undertaking for Sec. payment of costs. 77a. Short title. (f) Joint and several liability; liability of 77b. Definitions; promotion of efficiency, competioutside director. tion, and capital formation. Offering price to public as maximum (a) Definitions. amount recoverable. (b) Consideration of promotion of effi-Civil liabilities arising in connection with 771.ciency, competition, and capital prospectuses and communications. formation. (a) In general. 77b-1 Swap agreements. (b) Loss causation. (a) Non-security-based swap agreements. 77m. Limitation of actions. (b) Security-based swap agreements. 77n. Contrary stipulations void. 77c. Classes of securities under this subchapter. 770.Liability of controlling persons. (a) Exempted securities. Additional remedies; limitation on remedies. 77p. (b) Additional exemptions. (a) Remedies additional. (c) Securities issued by small investment (b) Class action limitations. company. (c) Removal of covered class actions. 77d. Exempted transactions. (d) Preservation of certain actions. Prohibitions relating to interstate commerce (e) Preservation of State jurisdiction. and the mails. (f) Definitions. (a) Sale or delivery after sale of unregis-77q. Fraudulent interstate transactions. tered securities. (a) Use of interstate commerce for pur-(b) Necessity of prospectus meeting repose of fraud or deceit. quirements of section 77j of this (b) Use of interstate commerce for purpose of offering for sale. (c) Necessity of filing registration state-(c) Exemptions of section 77c not applicament. ble to this section. 77f. Registration of securities. Authority with respect to security-(a) Method of registration. based swap agreements. (b) Registration fee. 77r. Exemption from State regulation of securi-(c) Time registration effective. ties offerings. (d) Information available to public. (a) Scope of exemption. 77g. Information required in registration state-(b) Covered securities. (c) Preservation of authority. 77h. Taking effect of registration statements and (d) Definitions. amendments thereto. 77r-1.Preemption of State law. (a) Effective date of registration state-(a) Authority to purchase, hold, and inment. vest in securities; securities consid-(b) Incomplete or inaccurate registration ered as obligations of United States. statement (b) Exception; validity of contracts under (c) Effective date of amendment to regprior law. istration statement. (c) Registration and qualification re-(d) Untrue statements or omissions in quirements; exemption; subsequent registration statement. enactment by State. (e) Examination for issuance of stop (d) Implementation. order. 77s. Special powers of Commission. (f) Notice requirements. (a) Rules and regulations. 77h-1. Cease-and-desist proceedings. (b) Recognition of accounting standards. (a) Authority of Commission. (c) Production of evidence. (b) Hearing. (d) Federal and State cooperation. (c) Temporary order. 77t. Injunctions and prosecution of offenses. (d) Review of temporary orders. (a) Investigation of violations. (e) Authority to enter order requiring ac-(b) Action for injunction or criminal prosecution in district court. counting and disgorgement. (f) Authority of the Commission to pro-(c) Writ of mandamus. hibit persons from serving as offi-(d) Money penalties in civil actions. cers or directors. (e) Authority of court to prohibit persons 77i. Court review of orders. from serving as officers and direc-Information required in prospectus. 77j. tors (a) Information in registration state-(f) Prohibition of attorneys' fees paid ment; documents not required. Commission disgorgement from (b) Summarizations and omissions allowed by rules and regulations. (g) Authority of a court to prohibit per-(c) Additional information required by sons from participating in an offerrules and regulations. ing of penny stock.

Hearings by Commission. Jurisdiction of offenses and suits.

77u.

77v.

Prospectus consisting of radio or television broadcast.

(e) Information in conspicuous part of

Civil liabilities on account of false registration statement.

(d) Classification of prospectuses.

prospectus.

77k.

(a) Persons possessing cause of action; 77w persons liable.

(b) Persons exempt from liability upon proof of issues.

(a) Federal and State courts; venue; service of process; review; removal; costs. (b) Contumacy or refusal to obey sub-

pena; contempt.

Unlawful representations.

Penalties. 77x. 77y.

Jurisdiction of other Government agencies over securities.

Page 95

Sec. Sec. 77z. Separability. 77ggg. Qualification of indentures covering securi- $77z_{-1}$ Private securities litigation. ties not required to be registered. (a) Private class actions. (a) Application; information required; (b) Stay of discovery; preservation of eviavailability of information to pubdence. (c) Sanctions for abusive litigation. (b) Filing of application. (d) Defendant's right to written interrog-(c) Applicability of other statutory proatories. visions. 77hhh Integration of procedure with Securities Act 77z-2. Application of safe harbor for forward-lookand other Acts. ing statements. (a) Incorporation by reference. (a) Applicability. (b) Consolidation of applications, reports, (b) Exclusions. (c) Safe harbor etc. 77iii. Effective time of qualification. (d) Duty to update. (a) Effective time of registration or ap-(e) Dispositive motion. plication for qualification of inden-(f) Stay pending decision on motion. ture. (g) Exemption authority. (b) Stop orders after effective time of (h) Effect on other authority of Commisqualification. sion. (c) Effect of subsequent rule or regula-(i) Definitions. tion on qualification. 77z-3. General exemptive authority. (d) Liability of trustee under qualified 77aa. Schedule of information required in registraindenture. tion statement. (e) Power of Commission to conduct in-SUBCHAPTER II—FOREIGN SECURITIES vestigation. Eligibility and disqualification of trustee. 77jjj. 77bb. "Corporation of Foreign Security Holders": (a) Persons eligible for appointment as creation; principal office; branch offices. trustee 77cc. Directors of Corporation; appointment, term (b) Disqualification of trustee. of office, and removal. (c) Applicability of section. 77dd. Powers and duties of Corporation, generally. 77kkk. Preferential collection of claims against obli-Directors of Corporation, powers and duties generally. (a) Trustee as creditor of obligor.(b) Exclusion of creditor relationship 77ff. Accounts and annual balance sheet of Corporation; audits. arising from specified classes. Annual report by Corporation; printing and 77gg. (c) Issue or sale of securities by regdistribution. istered holding company. 77hh. Assessments by Corporation on holders of for-77111. Bondholders' lists. eign securities. (a) Periodic filing of information by obli-77ii. Subscriptions accepted by Corporation as gor with trustee. loans; repayment. (b) Access of information to security 77jj. Loans to Corporation from Reconstruction holders. Finance Corporation authorized. (c) Disclosure of information deemed not 77kk. Representations by Corporation as acting for violative of any law. Department of State or United States for-77mmm. Reports by indenture trustee. bidden; interference with foreign negotia-(a) Report to security holders; time; contions forbidden. tents. 7711. Effective date of subchapter. (b) Additional reports to security hold-Short title. 77mm. ers. SUBCHAPTER III—TRUST INDENTURES Additional parties to whom reports to be transmitted. 77aaa. Short title. (d) Filing of report with stock exchanges. 77bbb. Necessity for regulation. 77nnn. Reports by obligor; evidence of compliance (a) Practices adversely affecting public. with indenture provisions. (b) Declaration of policy. (a) Periodic reports. 77ccc. Definitions. (b) Evidence of recording of indenture. 77ddd. Exempted securities and transactions. (c) Evidence of compliance with condi-(a) Specific securities exempted. tions precedent. (b) Application of sections 77eee and 77fff. (d) Certificates of fair value. (c) Securities issued or proposed to be (e) Recitals as to basis of certificate or issued under indenture. opinion. (d) Exemptions in public interest. (f) Parties may provide for additional (e) Securities issued by small investment evidence. company. 77000. Duties and responsibility of the trustee. Securities required to be registered under Se-77eee. (a) Duties prior to default. curities Act. (b) Notice of defaults. (a) Information required. (c) Duties of the trustee in case of de-(b) Refusal of registration statement. fault. (c) Information required in prospectus. (d) Responsibility of the trustee. (d) Applicability of other statutory pro-(e) Undertaking for costs. Directions and waivers by bondholders; prohivisions. 77ppp. 77fff. Securities not registered under Securities bition of impairment of holder's right to payment; record date. (a) Prohibitions affecting unregistered (a) Directions and waivers by bondsecurities not issued under indenholders. ture. (b) Prohibition of impairment of holder's (b) Prohibitions affecting unregistered right to payment. securities issued under indenture. (c) Record date.

77ggg.

agents.

Special powers of trustee; duties of paying

(c) Necessity of issuance under inden-

ture; application for qualification.

Sec.

77rrr. Effect of prescribed indenture provisions.

- (a) Imposed duties to control.
- (b) Additional provisions.
- (c) Provisions governing qualified indentures.

77sss. Rules, regulations, and orders.

- (a) Authority of Commission; subject matter of rules, etc.
- (b) Rules and regulations effective upon publication.
- (c) Exemption from liability for any acts taken in good faith in conformity with rules, etc.

77ttt. Hearings by Commission.

77uuu. Special powers of the Commission.

- (a) Investigatory powers.
- (b) Availability of reports from other offices; restrictions.
- (c) Investigation of prospective trustees.
- (d) Appointment and compensation of employees; lease and allocation of real property.

77vvv. Judicial review.

(a) Review of orders.

(b) Jurisdiction of offenses and suits.

77www. Liability for misleading statements.

77xxx. Unlawful representations.

77yyy. Penalties.

77zzz. Effect on existing law.

77aaaa. Contrary stipulations void.

77bbbb. Separability.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 80a-29 of this title.

#### SUBCHAPTER I—DOMESTIC SECURITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77ccc, 77ddd, 77eee, 77ffff, 77ggg, 77hhh, 77vvv, 77www, 77zzz, 78c, 78j–1, 78l, 78m, 78n, 78o, 78o–3, 78s, 78u–2, 78bb, 78lll, 79p, 79t, 79u, 80a–2, 80a–8, 80a–9, 80a–14, 80a–24, 80a–34, 80a–37, 80a–49, 80a–54, 80b–2, 80b–3, 631b, 7201 of this title; title 7 sections 1a, 6m, 12a; title 11 section 101; title 12 sections 635i–6, 1441a, 1441b, 1812, 3012; title 23 section 181; title 25 section 646; title 42 sections 2297h–2, 2297h–7; title 43 section 1625; title 45 section 1342; title 49 section 41762

### § 77a. Short title

This subchapter may be cited as the "Securities Act of 1933".

(May 27, 1933, ch. 38, title I, §1, 48 Stat. 74.)

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-477, title VI, §601, Oct. 21, 1980, 94 Stat. 2294, provided that: "This title [amending sections 77b and 77d of this title] may be cited as the 'Small Business Issuers' Simplification Act of 1980'."

# § 77b. Definitions; promotion of efficiency, competition, and capital formation

### (a) Definitions

When used in this subchapter, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit

for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. (2) The term "person" means an individual,

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a

security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 77e of this title shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.
(4) The term "issuer" means every person

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-